

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANTS: Virginia L. Dale; Paulette D. Hutcheon

CASE 41G-0498-R-2022

OBJECTOR: United States of America (USDA Forest
Service)

41G 7615-00

41G 7616-00

41G 7617-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 41G 7615-00, 41G 7616-00, and 41G 7617-00 appeared in the 41G Preliminary Decree. The claims received objections from the United States Department of Agriculture Forest Service (the "United States").

2. On November 28, 2022, the parties filed a Stipulation to resolve the objections filed against claims 41G 7615-00, 41G 7616-00, and 41G 7617-00.

3. In the Stipulation, the parties agree that claim 41G 7615-00 should be dismissed from the adjudication.

The multiple use remark on claims 41G 7616-00 and 41G 7617-00 should be modified to omit claim 41G 7615-00.

4. The parties indicate that the place of use for claim 41G 7616-00 should be corrected from the NENESE of Section 7, T2S, R4W, Madison to the SENESE of Section 7, T2S, R4W, Madison. The correction is an effort to describe the place of use more precisely. Based on the map in the claim file, it appears that the place of use lies close to the border between the NENESE and the SENESE of Section 7, T2S, R4W Madison. The correction does not have the potential to adversely affect other water users and should be accepted by this Court.

The parties request that an information remark be added to the claim noting that
WATER USE ASSOCIATED WITH RIGHT IS LARGELY NON-CONSUMPTIVE.

5. The parties indicate that claim 41G 7617-00 has a year-round period of diversion and should be changed to January 1 through December 31. The statement of claim form states that the parties used the water during the winter season, supporting the requested correction.

6. The parties stipulated that the following information remark should be added to claim 41G 7616-00, and the similar remark on the abstract for claim 41G 7617-00 should be revised to match:

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION COMPLETED 8/14/1979. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE UPDATED IN THE CENTRALIZED RECORD SYSTEM AFTER FINAL DECREE.

Modifications or additions of DNRC Change Application remarks will not be made by the Court. The parties were informed via order. The United States, in its January 27, 2023 Response to Court Order stated that the information remark request is not material to the Agreement, and the objections should be considered resolved. On May 5, 2023, the claimants indicated they agreed that the Stipulation should be accepted despite the court's inability to add or alter the change information remarks as requested.

The DNRC information remarks are not within the jurisdiction of the Water Court and do not need to be addressed to resolve all issues currently before the court.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The evidence before the court is sufficient to support the requested correction to the place of use for claim 41G 7616-00. The evidence before the court is sufficient to support the correction to the period of use and period of diversion for claim 41G 7617-00.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The withdrawal of claim 41G 7615-00 should be accepted by the Court.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court except for the requested modifications and additions to the DNRC change application information remarks.

RECOMMENDATIONS

1. Claim 41G 7615-00 should be dismissed from the adjudication.
2. Claims 41G 7616-00 and 41G 7617-00 should be modified as provided above.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommendations have been incorporated into the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: **41G 7615-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: PAULETTE D HUTCHEON
 2900 ASPENWAY DR
 HELENA, MT 59601 6601

 VIRGINIA L DALE
 1005 5TH ST E
 POLSON, MT 59860 3148

Priority Date:

Type of Historical Right:

Purpose (use): MINING

Flow Rate:

Volume:

Source Name: BEALL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 7616-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PAULETTE D HUTCHEON
2900 ASPENWAY DR
HELENA, MT 59601 6601

VIRGINIA L DALE
1005 5TH ST E
POLSON, MT 59860 3148

Priority Date: AUGUST 15, 1921

Type of Historical Right: FILED

Purpose (use): POWER GENERATION

Flow Rate: 4.01 CFS

Volume: 2,910.00 AC-FT

WATER USE ASSOCIATED WITH RIGHT IS LARGELY NON-CONSUMPTIVE.

Source Name: BEALL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	8	2S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		8	SENESE	7	2S	4W	MADISON

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

7616-00

7617-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 7617-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PAULETTE D HUTCHEON
2900 ASPENWAY DR
HELENA, MT 59601 6601

VIRGINIA L DALE
1005 5TH ST E
POLSON, MT 59860 3148

Priority Date: AUGUST 15, 1921
Type of Historical Right: FILED
Purpose (use): DOMESTIC
Flow Rate: 40.00 GPM
Volume: 13.00 AC-FT
Households: 3
Maximum Acres: 5.00
***Source Name:** BEALL CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	8	2S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		SENESE	7	2S	4W	MADISON

Total: 5.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

7616-00 7617-00

AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 8/14/1979. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.